IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Date of decision : September 27, 2006

Ram Chander ....Appellant

versus

State of Punjab ....Respondent

Coram: Hon'ble Mr. Justice Virender Singh

Present : Ms. Seema Narang, Advocate and
Mr. Vikas Chatrath, Advocate for the appellant

Mr. M.S.Sidhu, Senior Deputy Advocate General, Punjab

Judgment

Appellant Ram Chander stands convicted under section 18 of the Narcotric Drugs & Psychotropic Substances Act, 1985 (for short 'the Act') vide impugned judgment of learned Additional Sessions Judge, Ludhiana, and has been sentenced to undergo RI for ten years and to pay a fine of Rs one lac, in default of payment of fine to further undergo RI for two years, for allegedly keeping in his conscious possession 10 kgs of opium on 13.7.1995 concealed in container Ex. P2. He was apprehended by SI Gurcharan Singh PW5, the Investigating Officer of this case who along with ASI Dharam Pal PW1 and was near the canal minor within the area of

village Talwandi Rai when the appellant was seen lifting a tin container Ex. P2 on his head. In order to comply with the provisions of section 50 of the Act notice Ex. PA was given to him which was thumb marked by him and attested by ASI Dharam Pal and other police officials who were accompanying the aforesaid Gurcharan Singh Investigating Officer when the tin container was searched which contained 10 kgs of opium. Two samples of 10 gms each out of the same were separated. The samples were put in two separate small tin containers. The remaining opium was wrapped in a glazed paper and put in the same container . Parcels of the samples and the bulk were prepared which were sealed with the seal of ASI Dharam Pal bearing seal impression DP along with specimen impression chit Ex. P1. All these were taken into possession vide recovery memo Ex. PB attested by the Investigating Officer and the aforesaid PWs. The seal after use was handed over to ASI Dharam Pal. Thereafter personal search of the appellant was conducted which yielded a country made pistol of .315 bore and a live cartridge of the same bore from the right side pocket of his pant for which separate FIR under the Arms Act was got registered. Grounds of arrest vide Ex. PC were also prepared. A ruqa Ex. PD was sent, on the basis of which formal FIR Ex. PD/1 was recorded. Rough site plan was prepared at the spot. Thereafter the case property and the appellant were produced before the SI/SHO, Police Station Raikot, PW2 for the purpose of compliance of section 55 of the Act. He put his own seal bearing impression 'PS' on the case property, chit Ex. P4 and deposited the

same with MHC Pargat Singh PW3 who has tendered his affidavit Ex. PX. The statements of other police officials namely Constable Natha Singh and Constable Karam Singh were also recorded who have tendered their affidavits Ex. PY and PZ into evidence. Report of Chemical Examiner Ex. PG was obtained which opined the sample to be of opium.

After filing of the challan, the appellant was charged under section 18 of the Act and the prosecution in support of its case has examined PW1 Dharam Pal, PW2 Inspector Pritam Singh, PW3 Pargat Singh, PW4 Constable Natha Singh, PW5 SI Gurcharan Singh, PW6 Constable Karam Singh.

The appellant when examined under section 313 of the Code of Criminal Procedure pleaded innocence and took the plea that he was doing the work of cooking meals at the house of Inspector Ajit Singh, SHO, Police Station Raikot for more than one year prior to the presence occurrence and when he demanded his wages, the aforesaid Inspector felt annoyed and got him falsely implicated.

After appreciating the entire evidence, the appellant stands convicted and sentenced as stated above. Since the instant appeal has been filed through Jail by the appellant, Ms. Seema Narang, Advocate and Mr. Vikas Chatrath, Advocate have assisted this Court after being appointed by Punjab Legal Services Authority. On the other hand, Mr. Sidhu, the learned State counsel has also rendered his assistance.

Learned counsel for the appellant at the very outset states that

there is non-compliance of section 50 in this case and the appellant deserves acquittal on this ground alone. I am not convinced with the argument advanced in this regard as the same is to be repelled in the light of latest judgment of Hon'ble Apex Court rendered in **State of Himachal Prades vs. Pawan Kumar**, 2005(2) All India Criminal Law Reporter page 653 (F.B.).

The next argument advanced by learned counsel for the appellant is that there is delay of seven days in sending the sample for analysis. I do not find any substance even in this argument. No doubt the sample was sent after seven days of the alleged recovery but the same, in my view, would not be said to be fatal to the prosecution as I do not find any lacuna whatsoever in the statements of the official witnesses including Dharam Pal PW1 to whom seal after use was handed over. There is no flaw even in the affidavit tendered into evidence in order to prove the entire link evidence. After examining the entire evidence very carefully, my view is that there was no chance of tampering with the case property at any stage till it reached the hands of the analyst. Therefore, the argument advanced in this regard is also rejected.

The learned counsel then contends that no special report about the recovery was sent by the Investigating Officer to his immediate superior as required under section 57 of the Act and this flaw also entitles the appellant to acquittal. I do not find any weight in this argument as well. It has been authoritatively held by the Hon'ble Supreme Court in umpteen

judicial pronouncements that sections 52 and 57 of the Act are not mandatory in nature and if there is any non-compliance of the provisions of these sections, the prejudice caused to the accused has to be projected by him. In the case in hand, the appellant has failed to prove any prejudice being caused to him on account of non-compliance of the provisions of section 57 of the Act. The evidence on record is that immediately after the recovery was effected, the case property and the appellant were produced before the SHO Pritam Singh PW2 with regard to compliance of section 55 of the Act. He verified the investigation conducted by SI Gurcharan Singh and then put his own seal on the case property. He had in turn entrusted the case property to MHC Pargat Singh for deposit with him. In the present set of circumstances even if there is non compliance of section 57 of the Act, in my view, it has not caused any prejudice to the appellant so as to cast doubt on the credibility of search.

Lastly the learned counsel pointed out certain discrepancies in the statements of the official witnesses but I do not feel the necessity of entering into discussion with regard to the same as, in my view, those are just ignorable having no adverse effect on the alleged recovery.

The appellant has not come up with any plausible defence to rebut the presumption of conscious possession of the contraband. The plea taken by him in his statement recorded under section 313 of Cr.P.C is not at all convincing and deserves to be rejected.

No other point has been urged.

As a sequel to the aforesaid discussion, the net result is that the prosecution has been able to prove the charge against the appellant beyond any shadow of reasonable doubt and as such his conviction as recorded under section 18 of the Act deserves to be confirmed. Ordered accordingly.

At this stage, learned counsel for the appellant pray for a lenient view with regard to the sentence awarded to the appellant on account of payment of fine. The order indicates that in default of payment, the appellant has to undergo RI for two years.

Keeping in view the totality of facts and circumstances and especially the fact that the appellant is in custody since the date of his arrest, the sentence of two years awarded to him for default clause deserves to be reduced to one year only. Ordered accordingly.

Resultantly, the instant appeal stands dismissed on merits except in the modification in the quantum of sentence on account of default of payment of sentence of fine, as indicated herein above.

The concerned quarters be informed.

(Virender Singh)
Judge

September 27,2006
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